

Facilitator:

Naomi Mermin

In Attendance:

Paul Liebow Physicians for Social Responsibility
Lorin Alusic Grocery Manufacturers Association
Kathryn Belliveau Toy Industry Association
Michael Belliveau – Environmental Health Strategy Association
Evelyn deFrees – Learning Disabilities Association of Maine
Rep. Robert Duchesne Maine Legislature
Laura Harper Maine Women's Lobby
Ginger Jordan-Hillier Maine DEP
John James Maine DEP
Arthur Kazianis Toy Industry Association
David Neivandt – University of Maine
Curtis Picard Maine Merchants Association
Nancy Ross – Unity College
Sharon Tisher – Alliance for a Clean and Healthy Maine
Steve Wilson Preti-Flaherty/ Toy Industry Association

Meeting Notes:

The meeting began at approximately 10:15.

-The facilitator led the group in introductions including name and the parties represented. The Facilitator reminded the group that this was the final meeting of the stakeholder group under the requirements of the statute.

-The facilitator reviewed key next steps and dates including; any promised information or comments should be provided to either Ginger Jordan Hillier or the facilitator by May 12 to ensure inclusion in the appendix, a reminder would be sent by Ginger to this effect. Notes and an Index of comments would be circulated to the stakeholders by May 15. Correction of the index and notes must be in by May 26. The facilitator will then compile a report to the Commissioner representing the outcomes of the stakeholder process and with a full appendix of comments and meeting notes.

-The facilitator reviewed the agenda. The first topic is discussion of designating more than two priority chemicals and Maine DEP's resources for designating more. The discussion will then turn to stakeholder concerns and the possibility of continuing a dialogue after the stakeholder process.

-Curtis Picard states that he is in favor of ending early if possible.

-Steve Wilson asks about the process for industry to working together with Maine DEP after the final meeting.

-Ginger Jordan-Hillier says Maine DEP will not be convening another meeting on this matter, but welcomes the attendees to work together and then make recommendations to Maine DEP. Also asks attendees to monitor the safer chemical website for updates about the process.

-The facilitator tries to clarify Steve Wilson's desire to work with others to prioritize and recommend chemicals.

-Lorin Alusic states that it would be nice to know if Maine DEP would prefer stakeholder input after the process is finished.

-Ginger Jordan-Hillier states that when all viewpoints come together on an issue, it is beneficial. Keep in mind that the formal rule making process is imminent. Not sure how to answer Lorin Alusic's questions of the most productive way for them to participate.

-Arthur Kazianis asks what is the communication between states and the process of collaboration there.

-Ginger Jordan-Hillier states Maine DEP talks with other states frequently and they often collaborate when finding solutions.

-Arthur Kazianis states this makes it easy for him, because hopefully this collaboration will breed consistency.

-Ginger Jordan-Hillier states that consistent priority chemical lists may be possible, but not definite. Maine DEP only looks at authoritative government lists .

-John James says the department is striving for consistency with other state processes or lists. A high degree of consistency is expected, but the final rule on designation of priority chemicals may not be in lock step with other processes

-Paul Liebow asks if there is a list of national specialists that can aid in finding data on chemicals of high concern.

-Ginger Jordan-Hillier states that the statute requires the list be based on authoritative government lists, not the research of non-governmental specialists. .

-Paul Liebow states that outside specialists, especially local ones, should be tapped for input on the chemicals of high priority list.

-Ginger Jordan-Hillier says the DEP Rulemaking process is a highly regulated process for public participation.

-Rep. Duchesne states that completely independent of Maine DEP, there is a lot of legislative communication with other states and he expects a lot of constancy from state list to state lists.

-Curtis Picard asks which state will come out with a list first?

-Ginger Jordan-Hillier states that Maine and Washington will come out around the same time with Maine likely being first. California's process is much more robust with more resources needed so that may take longer.

-Paul Liebow states that designating more than the minimum number of chemicals would be beneficial because the federal government may pick those chemicals up in its own legislation.

-Lorin Alusic says designating more than the minimum number of chemicals is good, but it depends on what Maine DEP has for resources. He is worried the funds will come from.

-Mike Belliveau suggests that industry could make a donation.

-The facilitator states that both sides seem to have a desire to have a batch of chemicals. The facilitator states that both sides see a value to cooperating and finding a way to do that in regards to the work.

-Lorin Alusic says federal legislation would be great so organizations could follow one set of rules not many.

-Kathryn Belliveau says that even if federal legislation made three years of work moot, any work on the state level would be positive.

-The facilitator has new comers introduce themselves and briefs them on the topic and progress.

-Sharon Tisher asks what the possibility would be for Maine DEP to apply for grant funding.

-Ginger Jordan-Hillier says practical and political conversations need to occur in order to determine if grants are practical..

-Nancy Ross asks about the picture of Maine DEP's resource needs beyond managing data.

-John James says, based on his experience with his from mercury and DECA legislation, the largest unfunded part of this legislation is the alternatives assessment. He says cost estimates of \$100,000 for each study of an alternative study are common. Depending on how many products are being looked at, the cost could be more. The statute authorizes the department to assess a fee on manufacturers to cover the costs of an independent alternatives assessment but only if the manufacturer fails to submit an "acceptable" assessment of their own.

-Ginger Jordan-Hillier says there is a great time cost in the rule making process. This is the first time, the process will become more concrete over time. Sometimes it can be difficult finding the information that makes this process more elegant. If Maine DEP is a little vague, it is in part because there are things they are learning as they go.

-Mike Belliveau states the answer to the question of the number of designated chemicals is not necessarily resource dependent. Simply listing the chemicals as priorities the only impact is soliciting information. By adjusting reporting and data requests there may not be as high a cost in the first step. The least costly way to move away from priority chemicals is to incentivize the private sector to find alternatives. That way they can possibly cut out the most costly part of the process, regulation. Cites 1986 report that saw huge voluntary reductions on industry's part. More chemicals named the better, with little impact on resources.

-Ginger Jordan-Hillier talks about economizing the rule making process. More chemicals will take more time..

-Lorin Alusic says in naming as many chemicals as possible could stigmatize certain products, and if the resources aren't there to follow up then it may negatively impact industry.

-Kathryn Belliveau Maine DEP must be satisfied when designating chemicals as opposed to just naming more.

-The facilitator clarifies the process of naming priority chemicals. The conversation should be about getting the right number of high priority chemicals through in a batch, its not about creating a huge list of chemicals that are not a problem.

-Paul Liebow states that researching blood levels of chemicals in children and finding data from clinics may help clip the list down to a few.

-The facilitator states that the group should not be setting new thresholds.

-Evelyn deFrees states that generously listing priority chemicals will satisfy the efforts of members of her group who have worked hard on similar campaigns. Many members are concerned about other chemicals and says members are hungry for similar "BPA effect" in which chemical gains notoriety and then the market comes up with options for

parents.

-Lorin Alusic says it could be a domino effect with other states. If Maine can't complete the process then it could lead to chemicals being needlessly stigmatized.

-Rep. Duchesne says the legislature created this bill so they could give trust to Maine DEP and not legislate one chemical at a time. There is a high bar set.

-Mike Belliveau says if we draw from the strongest points of evidence in the bill then we could easily come up with 100-150 priority chemicals. Some of the other states are naming priority chemicals in batches like that. There are low hanging fruit in both toxicity and exposure. There should be a high bar set so the list is easily defenseable.

-Paul Liebow says you start with the list of chemicals from clinics and see what exist for data on effects on children's health. When you get the presentation from industry, will Maine DEP demand to see the reports that don't show what industry wants.

WHAT?-

-The facilitator says alternatives assessment was covered specifically at a prior meeting.

-Arthur Kazianis says the process for finding safe alternatives is somewhat trivialized here. No company wants to have a toxic chemical on the market. The process for finding alternatives is not as simple as it looks. The person who says it is safe also has a liability. It is a complex process by scientists and not industry.

-Steve Wilson litigation can help mitigate toxic chemicals due to injury.

-Sharon Tisher states when you're dealing with toxic chemicals, litigation is not an effective way to promote safer chemicals due to causation.

-Steve Wilson says there is a huge economic disincentive through litigation.

-Mike Belliveau there are economic incentives that cut both ways. The small number of DECA companies recovered capital investment earlier. If they hold onto the market share just a little longer that means extra profit. By the time the body of data exists to litigate against chemicals the chemical will also have had a chance to do more harm. The intent of this law is not to wait around to prove harm.

-Steve Wilson says the alternatives promoted by a larger list may lead to poorly evaluated alternatives.

-Mike Belliveau agrees with Steve Wilson and says that is why naming more sooner than later will help the market step up.

-Mike Belliveau states the problem is for companies who do not want to change.

-Lorin Alusic says naming a chemical will stigmatize a chemical in all uses.

-Mike Belliveau doesn't see the problem with that and says it is exaggerated because the public is unlikely to react this way to the list.

-Kathryn Belliveau states she has a role as a mother and toy industry representative. It is an interesting debate. Alternatives need to be properly vetted so there aren't discovered to be harmful to children. There should be no reason to force industry to stop using a chemical that has a safety value. There are two sides to the coin and there has to be some balance to the process. Investigating is not as easy as it looks.

-Lorin Alusic says that there is a process in the law and naming more chemicals may create a bottle neck.

-Rep. Duchesne says the group has drifted off of subject and should focus on Maine DEP's resources.

-The facilitator summarizes that the group has been discussing the value and risks involved with naming more than two chemicals. The facilitator states that the group has a possible shared idea of what the low hanging fruit is.

-Arthur Kazianis the statute says the list of 1800 chemicals mostly applies to chemicals outside of children's products.

-Ginger Jordan-Hillier says the list of chemicals of high concern is an attempt to get from the 80,000 chemicals to a smaller list. Everything isn't on the table. Chemicals of high concern is a starting point. Many of the 1800 are regulated by the FDA.

-Mike Belliveau recalls last meeting when the group discussed stake holders bringing to the table chemical suggestions. Asks Arthur Kazianis if it is his thought that just because his company uses BPAs should it not be regulated?

-Arthur Kazianis says his company has walked away from applications of BPA where they see a hazard, but would like to reserve the right to use it in some applications he sees as safe. Kazianis thinks Maine should name priority chemicals in respect to how and how much they are used in products.

-Mike Belliveau says that is not how the law is written.

-Arthur Kazianis says that is the biggest issue they have.

-Sharon Tisher says manufacturers cannot just think about things that go in the mouth because children put everything in their mouth.

-Arthur Kazianis says they did a mouthing study for certain products. Casual contact with the mouth is less than ten minutes a day.

-The facilitator clarifies that after a chemical is named it triggers data collection. The facilitator asks Arthur Kazianis if that is clear and if he still disagrees with naming a chemical and then getting data.

-Kathryn Belliveau says the group needs to be aware of the unintended consequences.

-The facilitator says that some mechanism for sharing data with Maine DEP before chemicals are named may make sure chemicals aren't needlessly stigmatized.

-Nancy Ross asks if the mouthing study result was a mean or a range.

-Arthur Kazianis says a number of other companies use BPA and the law runs the risk of banning products as an unintended consequences. He urges caution.

-Lorin Alusic states that his concern is that he doesn't want to create a bottleneck.

-Paul Liebow talks about the premature babies may have side effects just from the bpa in tubing used in medical care.

-Rep. Duchesne states that larger lists are hard to market to the public. Group is lost in weeds when talking about size of list.

-Kathryn Belliveau states there is a practical impact. The list will be used to forward agendas. We understand the list has been identified. There are unattended consequences.

-Mike Belliveau says there is some potential common ground for future work on the condition of pre-understanding. If we could all support BPA as a priority chemical then we can negotiate out usage and other factors. Maine DEP could possibly negotiate uses if industry could present usage reports.

-Arthur Kazianis states other states do have specific language about banning chemicals. Cites other states banning BPA in certain uses.

-Kathryn Belliveau states a listing of a chemical may operate as a ban.

-The facilitator asks how industry feels about Mike Belliveau's suggestion of continuing dialogue.

-Kathryn Belliveau says they are open to that.

-Steve Wilson says timelines need to be created so the process is clear and the group doesn't lose momentum.

John James states that input on which chemicals should be listed would be helpful after the rule making process is complete.

-Paul Liebow asks whether BPA is being voluntarily taken off of shelves?

-Lorin Alusic states a BPA conversation is remiss because of lack of toxicology experts present. Food manufacturers and international food safety authorities still say BPA is safe in food applications. We need to stop this conversation.

-The facilitator asks if there is a way to prioritize the short list?

-Kathryn Belliveau asks if BPA is a hypothetical?

-Mike Belliveau says BPA is not hypothetical, it is a priority. If we could agree that BPA/other chemical is a priority both sides could work through implementation of the law and chances are Maine DEP would follow our lead.

-Kathryn Belliveau states that they are not scientists. BPA as an example has a very necessary application.

-The facilitator clarifies Mike Belliveau's offer to industry a chance to be a part of the process in naming chemicals and also clarifying industry's uses for priorities chemicals.

-Mike Belliveau states that he wouldn't want to waste his time if there is no prior agreement.

-The facilitator asks what the group is willing to do.

-Lorin Alusic states cooperation is useful in all respects. While no agreement may be possible he is for continuing a dialogue.

-Paul Liebow says the science will explode in the next few years that will allow us to know more.

-Lorin Alusic recommends five half day meetings.

-Sharon Tisher by a certain deadline advocates submit a few chemicals to be possible priorities. Then industry runs that by their research and counters the offer with an agreement or disagreement.

-The facilitator clarifies the possible process for working ahead on after the meeting.

-Sharon Tisher says that an agreement on priority chemicals must be made before meetings should occur.

-Kathryn Belliveau says that pushing an agreement upfront may be a little pushy.

-The facilitator says this process could be a time saver unless both sides just want to meet and fight over chemicals.

-David Neivandt asks Arthur Kazianis if there is a list industry has of priority chemicals?

-Arthur Kazianis says a list exists of chemicals they don't use and some are regulated by the federal government.

The group takes a short break for lunch.

-The facilitator asks for steps in the collaboration process moving forward. She summarizes the concept for collaboration. The steps involving identifying and agreeing on a list.

-Steve Wilson asks if a timeline can be established.

-The facilitator states that identifying co-moderators and leadership would be helpful.

-Mike Belliveau nominates Matt Prindiville and Andy Hackman.

-Lorin Alusic says the position may rotate.

-Paul Liebow asks if Maine DEP would accept minority reports.

-Ginger Jordan-Hillier says that the Maine DEP gives great weight to groups that reach consensus.

-Lorin Alusic asks if the potential group would be a voting body?

-Charles Urqhart states that the group is putting the cart before the horse when discussing protocol before whether or not the group would even agree before hand.

-Lorin Alusic asks if there is a guarantee whether Maine DEP would be interested in the potential collaborative group's work?

-Ginger Jordan-Hillier states again the Maine DEP pays attention to those that work on issues together and reach consensus but there is no guarantee. Staff level decisions are reviewed by others..

-Kathryn Belliveau it would be unfair to expect that Maine DEP would take wholesale

the group's recommendations.

-Ginger Jordan-Hillier the formal stakeholder group ends today, but further collaboration without DEP is welcome.

-Charlie Urqhart says he is skeptical of the process that the meetings would be unproductive and cumbersome for all interests to come to the table with a list of chemicals.

-Lorin Alusic states that he is not sure they will come into an agreement but is willing to participate. More dialogue may be productive.

-Kathryn Belliveau thinks everyone here is being intellectually honest when they say they want a further dialogue, but it is unfair to the group to say upfront whether we will agree or not. We will share our information openly.

-Charlie Urqhart asks if agreeing on chemicals as an opener

-Rep Duchesne says the group's motivation should be enlightened self interest. The industry can get the most out of this legislation by having an offline dialogue. It would allow industry to potentially have certain usage conditions set up by the time a chemical makes it to the priority list.

-Arthur Kazianis states once a chemical is listed as a priority on the website, there will be a number of stake holders lobbying for or against the use, whatever the case may be. The state has to be prepared.

-Sharon Tisher states that the huge disadvantage the United States has by not signing onto the Kyoto Treaty is that they were left out of the talks on chemicals. All of industry doesn't have to be together on this issue. The ones that want to come to the table can and those that don't want to play don't have to. The perception Tisher had was that the pre-cursor to potential ongoing discussions would be some chemical is problematic enough is that it would be on the list.

-Kathryn Belliveau states that toy industry would be hard pressed to come up with a list. We go by the regulator's jurisdiction. That doesn't give comfort to many advocates because many feel the federal government has not gone far enough. If the list were limited to six or ten, then industry can come up with data. Industry is not a scientific body.

-The facilitator tries to clarify that the list is the advocates to come up with and industry can give input if it would like to. The advocates don't necessarily want to partake in meetings if not prior understanding of priority chemicals can be reached.

-Kathryn Belliveau states that industry relies on federal jurisdiction.

-Arthur Kazianis states that certain chemicals that cannot be regulated out of products without considering use. There may be chemicals that should be on the list. Specifically using BPA as an example, Kazianis doesn't want the US to regulate a chemical that the rest of the world is not.

-The facilitator says that the discussion this far has shown that there is a value in both sides reaching out to each other. Advocates don't necessarily want to partake however it is not a given that at the end of such meetings an agreement would be to agree to some priority chemicals.

-Mike Belliveau based on that would industry agree to be agnostic or neutral?

-Kathryn Belliveau if we were to get to a point where we could show you how we use and research our products and come to an understanding then maybe we wouldn't disagree to naming BPA hypothetically.

-Lorin Alusic says it becomes a problem when some represent multiple companies that may have different viewpoints. We do not speak for niche markets, but industry as a whole.

-Kathryn Belliveau states that TIA is very involved in the toy industry.

-Matt Prindiville asks Alusic about his task of representing his member companies and whether he is beholden to all opinions.

-Lorin Alusic says that he doesn't represent niche markets, but similar to Prindiville, speaks for many people. He doesn't have a full picture as to how all of his member companies would view BPA for example being listed, or other issues. There are politics within trade associations as within environmental groups.

-Rep. Duchesne outlines a possible process for how the win-win dialogue could happen. Prindiville e-mails a possible list of twenty chemicals that may or may not end up as priorities to industry, and while industry will not have to agree, they will send data back concerning their use of the chemicals. Their usage will be taken into account given limited resources for going after priority chemicals.

-Mike Belliveau asks whether or not there is a risk in letting industry know the thirty or so chemicals the advocates want to go after. Conversations going forward would only be useful going forward if they were about specific chemicals. Rather than us sending industry a list of 20, they tell us a list of chemicals they have interests in. Conversations beyond the stakeholder process would only make sense if companies had a stake with specific chemicals.

-Arthur Kazianis states that despite the broad parameters of the chemicals on the list,

industry can give you information on the chemicals in question, but it is only fair if it is on an honest going forward basis. There is not something we want to keep away from you, and you want to keep nothing from us.

-Rep. Duchesne clarifies the process again. A list is sent to each industry interest group, the industry group responds with what chemicals they have interests in. The group agrees and then proceeds to elect co-moderators and the logistical process for a dialogue. It is agreed that all of the parties may not be participating in a dialogue at the same time. Alusic pushes to have a date set so the group doesn't lose momentum.

-The facilitator goes over important deadlines. The notes will be on the website by 5/15. Any take aways are also due by 5/15. Corrections are due by 5/25. A brief period of corrections will be allowed at that time.

-Matt Prindiville agrees to co-moderate a discussion group beyond the stakeholder process as well as someone from industry.

The meeting closes with commentary about the stakeholder process.

-John James states he has heard a lot that will help inform improvements to the draft rule. He thinks it will be early fall before a revised draft is presented to the Board of Environmental Protection to commence formal rule adoption proceedings .

-Lorin Alusic states that the process was effective, although it was difficult with many voices being represented. Alusic states that everyone got to voice their perspective.

-Matt Prindiville states that a high level of distrust existed at the beginning but the group had moved through that. Familiarity with the process and the law helped the group get work done, and although consensus may not be imminent, some inroads have been made.

-Rep. Duchesne says seeing the process is great as a legislator.

-Mike Belliveau states it was useful having a preliminary draft rule, even though it was controversial.

-The facilitator thanked the group for their work over the stakeholder process and expressed appreciation for their knowledge and skills it was a very interesting and instructive group to facilitate.